

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-603-S - ORDER NO. 93-1140 *lc*

DECEMBER 16, 1993

IN RE: Request of Crockett Road Association for) ORDER
Exemption From the Commission's Rules and) GRANTING
Regulations and to Grant Homeowners Status) EXEMPTION
(R.103-502.3).)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the September 14, 1993 Application of Crockett Road Association, Inc. which seeks approval for an exemption from the Commission's jurisdiction as per the Commission's Rules and Regulations. The Application was filed pursuant to S.C. Code Ann. §58-5-240 (1976 as amended) and R.103-502.3 of the Commission's Rules of Practice and Procedure.

Four intervenors intervened after the filing of the Application. Therefore, the matter was set for hearing on December 8, 1993 at 2:30 p.m. with the Honorable Henry G. Yonce presiding. The Applicant, Crockett Road Association, Inc. (the Association) was represented by Joseph M. Epting, Esquire. The Association presented the testimony of William T. White, Gerald H. Smith, and Charles G. Jeffcoat in favor of the Application for exemption. The four intervenors in the case were Barbara A. Blanks, Monica M. Kundla, James B. Barker, Jr., and John M. Leonhardt. Only Blanks and Kundla were present at the time of the hearing. The Commission staff was represented by F. David Butler, General Counsel. Staff

presented no witnesses.

William T. White testified for the Association. He noted that some of the property owners on Crockett Road had been experiencing problems with their septic tank systems and the owners felt that they would have to get a sewerage system to sooner or later serve their properties. The property owners contacted the City of Columbia and the Department of Health and Environmental Control (DHEC). During this time, public meetings were held with the property owners in the area to see if they wanted to participate in the formation of a property owners association. The corporation Crockett Road Association, Inc. was formed on July 15, 1991. The City of Columbia was apparently not willing to bear the expense of installing a system and pump station for the sewer line, according to witness White. The City also required that the Association install water lines and join their water system. Subsequently, the Association had engineers to prepare plans, and competitive bids were obtained from at least four utility contractors. G.H. Smith Construction Company was the successful bidder on the contract.

According to White, all of the homeowners who wanted to participate paid an initial fee of \$200 each for use in doing the preliminary work, forming the corporation, getting bids, and other necessary matters. As soon as the Association had an idea of what the costs were going to be, the Association attempted to determine how many of the homeowners would participate. The Association then tried to obtain commitments from the homeowners. Eleven homeowners elected to participate, a majority of whom paid approximately \$15,000 each into the Association. The Association also collected

and collects annual dues. The City has taken over the water line but refuses to take over the sewer line, thus the request by the Association to become a property owners association, exempt from Commission regulation.

The homeowners association presently has eleven homeowners on the line. According to DHEC, a maximum of sixteen may be served from the line, so that the maximum additional homeowners that could be served would be five. White also sponsored Hearing Exhibit 1, which consisted of the Articles of Incorporation of the corporation, a statement from eleven homeowners in the area, and the sewer permit from DHEC. (There is a portion of the requisite Regulation whereby the homeowners association is to submit the By-Laws of the Association. No such By-Laws apparently exist for this Association.)

The homeowners association also presented the testimony of Gerald H. Smith, who was the successful bidder on the Crockett Road water and sewer project. Smith stated that his bid for the water and sewer work was in the amount of \$94,068.50 and because of changes, the actual cost was \$92,499.78. Smith testified that his work included the complete installation of the water lines and sewer lines and installation of a lift station with the required pumps. Smith did not perform any road work which had to be done. Further, Charles G. Jeffcoat, Treasurer of the Crockett Road Association, Inc. testified that the Association was a non-profit corporation, that the main funding of the Association was the dues or the annual assessments which are paid by eleven homeowners in the amount of \$130.00 each. Jeffcoat testified that all of the

homeowners association's officers serve without compensation. Jeffcoat also presented as an exhibit a balance sheet showing income and expenses of the Crockett Road Association, Inc.

The intervenor, Barbara A. Blanks, testified and stated that, over a two year period, she attended several meetings of the property owners on Crockett Road. This area is in Lexington County approximately two miles from the Lake Murray Dam. According to Ms. Blanks, the cost of the system kept skyrocketing. According to Ms. Blanks, she was never given any plans or cost breakdowns. Therefore, she considered any investment in the project as being risky at best.

Monica M. Kundla also testified that she was invited to attend a meeting regarding the installation of water and sewer in the Crockett Road neighborhood. Ms. Kundla declined participation in the Association. She states that she was not interested in spending the amount of money necessary to install the water and sewer on her property. Further, Ms. Kundla stated that she believed it would be a great injustice for those remaining in the neighborhood to be forced to hook up to a system that they never wanted and that was inadequately engineered.

The law of this case is found in Regulations R.103-502.2 and R.103-502.3. R.103-502.2 states in part that a "Homeowners Association as defined in Section 3 of the rule and subject to the requirements set forth herein, upon Commission Order, may be found not to be a utility." R.103-502.3 defines a Homeowners Association and the requirements for the Commission to find Homeowners Association status.

R.103-502.3 Homeowners Association.

An association of lot owners located in a particular subdivision or development incorporated under the laws of this State as a non-profit corporation, including as one of its purposes, the operation of a sewerage system to serve the particular subdivision or development. Each homeowners association, prior to the commencement of operations of a sewerage system, shall file with the Commission (a) a certified copy of its certificate of incorporation; (b) a copy of the corporation's bylaws; (c) a copy of any declaration of covenants, conditions and restrictions on real property in the subdivision or development filed in conjunction with the formation of the homeowners association; (d) a copy of the permit or authorization from the Department of Health and Environmental Control issued to the homeowners to operate the system, and (e) copies of a statement signed by each lot owner disclosing that the sewerage services in the subdivision are provided by a non-profit homeowners association, in which each lot owner is a voting member, and that an appropriate assessment to meet operating expenses of the Utility must be paid by each lot owner.

The Commission has examined the testimony and exhibits in this matter and finds that the Crockett Road Association, Inc. meets the requirements of 103-502.3 (a), (b) and (d). Crockett Road apparently has no declaration of covenants on the real property, therefore, 103-502.3 (c) does not apply. The remaining requirement for homeowners association status is copies of a statement signed by each lot owner, disclosing that the sewerage services of the subdivision are provided by a non-profit homeowners association, in which each lot owner is a voting member, and that an appropriate assessment to meet operating expenses of the utility must be paid by each lot owner. In the case at bar, the evidence shows that some eleven out of sixteen signatures of Crockett Road property owners were obtained. The Commission finds, however, that under R.103-501 (3), full compliance with section e of 103-502.3 should be waived, and that this waiver is in the public interest. Eleven

property owners have come forward and paid ten to fifteen thousand dollars each for membership in the association to fund the laying of the sewer lines. Those intervenors who have testified before the Commission have basically testified that they did not want to pay the sums of money for membership in the Association. In this case, since the majority of property owners have signed the requisite statement listed in the regulation, and paid monies, the Commission believes that it is in the best interest of the public to waive the requirement for the signatures of all lot owners in the subdivision. Those individual property owners who have not signed, according to the testimony, still have the opportunity to become members of the Association by paying the appropriate monies. We believe that this is appropriate under the circumstances, and further, we believe that the exempt status of Crockett Road Association, Inc. should be granted.

IT IS THEREFORE ORDERED:

1. That the Crockett Road Association, Inc. is a homeowners association as defined in the regulations of the Commission.
2. That Crockett Road Association, Inc. is not a utility as per R.103-502.2, and can therefore be considered to be a private system.
3. That Crockett Road Association, Inc. is hereby found to be a homeowners association under the provisions of R.103-502.3 and is therefore held to be exempt from the jurisdiction of this Commission.
4. That, should the individual property owners who have not joined the Association wish to do so, they should be allowed to do

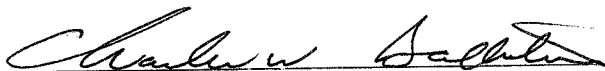
so by paying an amount no greater than that paid by the original investors.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)